IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9216 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

G H JHIGOLA

Appearance:

1. Special Civil Application No. 9216 of 2001

MR SAURABH J MEHTA for Petitioner No. 1

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/03/2002

ORAL JUDGEMENT

#. Heard Mr.Saurabh J. Mehta, learned advocate appearing on behalf of the petitioner Corporation and Mr.P.H.Pathak, learned advocate for respondent workman.

#. The petitioner Corporation has challenged the award

passed by the labour court, Surat in Reference No.153 / 1995 dated 9th March, 2000, wherein the labour court has granted 40 % backwages for the period from date of Reference 10th May, 1995 upto retirement of the respondent workman 30th August, 2000. Learned advocate Mr.Mehta appearing on behalf of the petitioner Corporation has submitted that the respondent workman has remained absent on duties from 2nd May, 1989 to 22nd August, 1989 without prior permission of the competent authority. The workman has not given any satisfactory reason for remaining absent. That two notices were served on the respondent workman with request to resume duty but the workman has not given any response or reply nor resumed the duties. Thereafter, chargesheet was served on the respondent workman on 28th August, 1989 and departmental inquiry was conducted on 22nd September, 1989 and exparte inquiry proceeding completed on 21st September, 1989 and ultimately, show cause notice was served and the workman was dismissed from service on 28th September, 1989. Therefore, it is case of the petitioner Corporation that sufficient opportunity was given to the respondent but he has failed to remain present and looking to the past record of 10 defaults, once dismissed and therefore, the labour court has committed gross error in granting 40 % backwages from the date of Reference, which ultimately amounts to premium to such defaulter and hence, the labour court has committed gross error in granting relief in favour of the respondent workman.

#. Learned advocate Mr.Mehta for petitioner Corporation has relied on the decision of the Division Bench of this Court [Coram : Mr.Justice B. C. Patel and A.L.Dave, JJ.] rendered in case of MAGANBHAI L. CHAUHAN v. DIVISIONAL CONTROLLER, G.S.R.T.C. reported in 1999 [1] G.L.H. 527, wherein the Division Bench has taken view that termination for wilful absence and absence from duty especially in cases where the employees is connected with public services cannot be tolerated. Mere production of a medical certificate justifying absence, without prior intimation will not exonerate an employee, particularly when in the inquiry proceedings the charge is proved, looking to the past conduct and in absence of the delinquent examining the Doctor, order of dismissal has been confirmed by the division bench of this Court.

#. Learned advocate Mr.P.H.Pathak appearing on behalf of the respondent workman has submitted that the respondent workman remained absent for three months. That the respondent workman had joined as Conductor in the year 1970 and in past not a single incident of remaining absent without permission has occurred and no punishment

of dismissal was imposed. However, he submits that out of 10 defaults, once the workman was dismissed from service. Mr.Pathak, learned advocate submits that before the labour court, the respondent workman has not challenged the legality and validity of the departmental inquiry but the challenge was confined upto finding recorded by the competent authority only. Thereafter, the respondent workman was examined while Exh.10 and then both the parties have closed their evidence. Mr.Pathak, learned advocate submits that the labour court has given cogent reasons in support of its conclusion and looking to the gravity of misconduct, punishment of dismissal is rightly considered as harsh and unjustified. It is also pointed out that at the time of recording of deposition of the respondent workman, he was reached at the age of 59 years and therefore, the labour court has not granted reinstatement but taking sufficient care, ultimately the labour court has awarded the backwages not from the date of dismissal 28th September, 1989 but granted from date of Reference 19th January, 1995 and therefore, the labour court has not granted any amount of backwages from the date of dismissal and only granted from the date of Reference that too to the extent of 40 % of the total backwages. Therefore, the labour court has not committed any error in passing such award which in any way requires interference of this Court.

#. I have considered submissions of the learned advocates for the parties and also perused the entire award passed by the labour court. The labour court has given cogent reasons in support of its conclusion and also considered the past record of the respondent workman. The past record of the respondent workman, does not reflect that any misconduct in respect of absenteeism has been committed by the respondent workman. It has also come on record that the respondent workman has rendered service of more than 20 years with the petitioner Corporation. Moreover, the labour court has considered one aspect that now the respondent workman has already reached the age of superannuation and therefore, reinstatement has not been granted and considering all these aspects, awarded 40 % backwages from the date of Reference. According to my opinion, view taken by the labour court cannot be considered to be erroneous. Learned advocate Mr.Mehta has relied on decision of the Division Bench of this Court but considering the decision cited before me, the facts before the division bench and of the case on hands are totally different and therefore, in my opinion, the decision cited by learned advocate is of no assistance to the case of the petitioner and the same would not be applicable in the facts of this case.

#. Therefore, according to my opinion, the Labour Court has jurisdiction to exercise the powers under Section 11-A of the Industrial Disputes Act. It is discretionary powers of the Labour Court and the Labour Court has rightly exercised the powers looking to the facts and circumstances of the case. There are two views, the judgment of Apex Court reported in AIR 1994 SC 215 relating to absenteeism, wherein the Apex Court has considered that absenteeism cannot be considered to be a serious misconduct observing that;

"2. ....
The incumbent while admitting the fact that he had over-stayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. We are of the opinion that the punishment of dismissal for over-staying the period of 12 days in the said circumstances which have not been controverted in the counter is harsh since the circumstances show that it was not his intention to wilfully flout the order, but the circumstances force him to do so. In that view of the matter the learned counsel for the respondent has fairly conceded that it was open to the authorities to visit him with a minor penalty. If they so desired, but a major penalty of dismissal from service was not called for. We agree with this submission."

Whereas, in one other decision reported in 1999 SCC Labour and Service pg.666, the Apex Court has held as under :-

"4. In our view, in the facts and circumstances of the case, the punishment of dismissal from service is too harsh and on the contrary it is required to be substituted by appropriate lesser punishment. Learned counsel for the respondents after instructions has stated that appropriate lesser punishment may be awarded by this Court. It will be acceptable to the respondents. In our view, ends of justice will be served if we set aside the order of dismissal of the appellant and instead direct reinstatement of the appellant in service with continuity and with all other benefits save and except

> withdrawing 50 per cent of back wages from the date of dismissal i.e. 11-10-1988 till today. In our view, this punishment which will involve substantial monetary loss to the appellant will meet the ends of justice and will be a sufficient corrective measure for the appellant. The request of learned counsel for the respondents that two future increments may also be withheld without cumulative effect does not appear to us to be justified on the peculiar facts and circumstances of the case. In our view, the aforesaid monetary loss to the appellant will meet the ends of justice so that he may be careful in future. It is ordered accordingly. At the request of learned counsel for the respondents eight weeks time is granted to the respondents to comply with the present order and to reinstate the appellant with continuity in service and with all other benefits. We make it clear that from today onwards the appellant will be entitled to full salary. Both the appeals are allowed accordingly. The orders of the Tribunal dated 4-11-1996 and 13-2-1997 are set aside. O.A. No.714 of 1993 filed by the appellant in the Tribunal shall stand allowed in aforesaid terms. In the facts and circumstances of the case, there will be no order as to costs."

Both these judgments are relating to absenteeism of workman for 15 days period and the Apex Court has taken view that in such absenteeism or overstaying on leave without informing the employer, cannot be said to be serious misconduct and punishment of dismissal is to be considered as harsh and disproportionate. Therefore, according to my opinion, the Labour Court having jurisdiction to pass such award. There is no procedural irregularity committed by the Labour Court. As such, there is not dereliction of duty or grave injustice to any party while passing such award and therefore, no interference of this Court is called for, in my opinion, there is no substance in the petition, deserves to be dismissed.

#. However, it is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 226 and 227 of the Constitution,

interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANDKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not.

#. In view of above observations, according to my opinion, the labour court has not committed any error either of jurisdiction or any procedural irregularity and therefore, no interference of this Court is called for while exercising the powers under Article 226 and 227 of the Constitution. Therefore, there is no substance in this petition and same is rejected accordingly. Ad-interim relief, if any, stands vacated. Rule discharged. No order as to costs.

Direct service to respondent is permitted.

Date : 18-3-2002 [H.K.Rathod, J.]

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